

D&M REFERENCE: KCX-771 (19263)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Eric C. Steindorf) Examiner: Nihir B. Patel
)
Serial No: 10/743,260) Art Unit: 3743
)
Filed: December 22, 2003) Deposit Acct. No: 04-1403
)
Confirmation No: 4463) Customer No: 22827

Title: FACE MASK HAVING BAFFLE LAYER FOR IMPROVED FLUID RESISTANCE

APPELLANT'S REPLY BRIEF

MAIL STOP APPEAL BRIEF – PATENTS
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.41, Appellant hereby submits his reply brief to the Examiner's Answer mailed on June 22, 2007, for the caption application.

7. ARGUMENT:

In the Response to Argument section at lines 5-11 of page 6 of the Examiner's Answer, it is contended:

The Appellant argues that Baumann's resilient member 12 with the pillowed lower density region 44 is not configured to be placed over a mouth and at least part of a nose of the user. First, the Examiner would like to point out that the Appellant's claims require a "body portion having a baffle layer" (claim 1) or "a layer" (claim 12). The claims do [sic.] require that the entire body portion be covered by the "baffle layer" or "layer", nor do they require that the "baffle layer" or "layer" cover the mouth and at least part of a nose of the user. The Baumann reference clearly shows a body portion having a baffle layer.

Contrary to the above statement, and as explained below, appellant's claims do require the baffle layer to cover the mouth and at least part of a nose of the user.

Each of claims 1-5, 10, 12, 13, 15, 16, 20 and 25 requires (emphasis added):

a body portion configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion,

See page 8, lines 23-26 of applicant's specification for example. Each of claims 1-5 and 10 requires (emphasis added):

the body portion having a baffle layer * * *, the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent strike through.

Similarly, each of claims 12, 13, 15, 16, 20 and 25 requires (emphasis added):

the body portion having at least one layer, * * * the layer having a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion,

See page 9, lines 14-18, page 10, lines 22-23, page 11, lines 2-3, and Figs. 3-5 and 7-12 of applicant's specification for example.

As quoted above, appellant's claims require the baffle layer (claim 1) or the layer with the projections (claim 12) to be configured to aid in absorbing energy associated with fluid striking the body portion. See page 10, lines 5-21 and Figs. 3 and 9 of appellant's specification for example. To accomplish being configured to aid in absorbing energy associated with fluid striking the body portion, the baffle layer must indeed cover the mouth and at least a portion of the nose of the user, which is the portion most likely to be struck by fluid when the face mask is in use. If the baffle layer is not so disposed, then it would not be configured to aid in absorbing energy associated with fluid striking the body portion. Moreover, covering the mouth and at least a portion of the nose of the user is the only configuration illustrated in the drawings and described in appellant's specification. And it is appellant's specification (not the specification of the Baumann et al patent) against which the meanings of terms in appellant's claims are to be interpreted.

In the Response to Argument section at lines 12-17 on page 6 of the Examiner's Answer, it is contended that (emphasis in original):

Second, the examiner would like to point that Baumann clearly states that "**Resilient member 12 can be positioned on the mask portion in a variety of configuration. For example, resilient member 12 can be affixed to the major exterior surface 14 of mask portion 16**" (**see figures 1 and 3**), indicates that the body portion in Baumann's reference has "a baffle layer" or "a layer" as recited in the appellant's claims and clearly shows that the body portion of the mask is intended to cover the mouth and at least part of the nose.

However, the portion that is presented in bold typeface is misleading in two respects. First, it is a partial quotation. If the full quotation were presented, it would be

apparent that Baumann was teaching that the resilient member could be affixed to a specific portion of the exterior of the mask and that portion was illustrated in Figs. 4a, 4b, 9a, 9b and 13, and not from figures 1 and 3 as was suggested by the bold typeface in the above-quoted portion of the Examiner's Answer. The particular quotation comes from two sentences at Baumann column 4, lines 15-21, and these sentences are reproduced in their entirety here (emphasis added):

Resilient member 12 can be positioned on the mask portion in a variety of configurations. For example, resilient member 12 can be affixed to the major exterior surface 14 of mask portion 16 **along opposing edges 34, 36** so that major exterior surface 14 of mask portion 16 and the interior surface 28 of the resilient member are in facing relation with each other, as shown in FIGS. 4a, 4b, 9a, 9b and 13.

Thus, the quotation in the Examiner's Answer is truncated so as to suggest that the resilient member was positioned other than where it is shown in the figures of Baumann, which is not covering the entire mouth and a portion of the nose. Instead, resilient member 12 is only at one edge of the exterior surface 14 of the mask portion 16 and is manifestly incapable of covering the mouth and a portion of the nose.

Respectfully submitted,

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DATED: 07/27/07


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